REMARKS

This amendment is being filed along with a Request for Continued Examination (RCE) in response to the final Office Action having a mailing date of October 31, 2008. Various claims are amended as shown. New claims 46-47 have been added. No new matter has been added. Claims 3, 5, 11, 14, 18-36, 41, and 45 were previously canceled without prejudice. With this filing, claims 1-2, 4, 6-10, 12-13, 15-17, 37-40, 42-44, and 46-47 are pending in the application.

I.   Discussion of the claims and cited references

The final Office Action rejected claims 1, 2, 7, 8, 10, 12, 13, 16, 37, 38, 40, 42, and 44 under 35 U.S.C. § 102(b) as allegedly being anticipated by Freeman (U.S. Patent Application Publication No. 2001/0049717). Claims 4, 6, 15, 39, and 43 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Freeman in view of Bullard (U.S. Patent No. 6,405,251). Claims 9 and 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Freeman in view of Eggleston (U.S. Patent No. 5,764,899).

For the reasons set forth below, these rejections are respectfully traversed. It is therefore kindly requested that the claims be reconsidered and withdrawn.

A.   Independent claim 1

Independent claim 1 as presented herein recites, *inter alia*, "load balancing according to license availability..." It is respectfully submitted that this recitation is not taught by the cited references.

For example in rejecting claim 1, page 7 (section 8) of the final Office Action relies upon paragraphs [0348+] of Freeman as allegedly teaching "load balancing to direct said granted request to one of said servers..." While paragraph [0348] *et seq.* of Freeman teaches "load management" and his paragraph [0365+] discusses "license management," it is respectfully submitted that these and other passages of Freeman are silent with respect to "load balancing according to license availability..." as recited in claim 1.

For instance, Freeman teaches the following in his paragraphs [0351] and [0352] below (emphasis ours) regarding his load management system (LMS):

"[0351] In one embodiment, the <u>LMS is rule-based</u>, and an administration tool 140 can be used to modify or create <u>rules for managing server load. A rule is one or more criteria that influences how a LMS will direct requests</u>. Rules may be individualized to a specific server 180. Rules can also be individualized to a specific application on a per-server basis. That is, one or more rules may be associated with a copy of an application residing on a first server 180 in the farm 110 and different rules may be associated with a copy of the same application residing on a second server 180 in a farm 110. The output of rules individualized to a specific application may be combined with the output of general server rules to direct a client request.

[0352] <u>Rules use the output from one or more operational meters</u>. <u>Operational meters may measure any aspect</u> of <u>server performance</u> and the result is used by rules to help determine which server 180 is most appropriate to service a client request. <u>For example, operational meters may measure: processor load; context switches; memory usage; page faults; page swaps; transmission rate of input/output reads or writes; number of input/output operations performed</u>. In one embodiment, operational meters are used by a LMS to measure server performance during the occurrence of certain events such as a request for a client connection. In another embodiment, operational meters are used by a LMS to measure server performance at predetermined intervals, which may be configured by an administrator. A LMS on each server 180 in the farm 110 evaluates various performance metrics for the server 180 for each predetermined period of time and stores that information in the dynamic store 240 by sending an event message to the dynamic store system service module 356. For example, every thirty seconds, an evaluation of server

9

load may include a query to operational meters for server's CPU utilization and memory utilization. The results from the query will be used, in conjunction with other applicable load factors, to calculate a load number for this server load. The new load number is then sent to the dynamic store."

As evident from the above-quoted passages of Freeman, his LMS directs requests to servers based on "rules." These "rules" use the "output from one or more operational meters" and the "operational meters" measures any aspect of "server performance." Freeman describes these "operational meters" pertaining to "server performance" as "processor load; context switches; memory usage; page faults; page swaps; transmission rate of input/output reads or writes; number of input/output operations performed."

Clearly, none of the "operational meters" pertaining to "server performance" as taught by Freeman measures/includes "license availability" as recited in claim 1. Freeman does not even mention licenses when he described his LMS, rules, operational meters, and server performance above. Indeed, it is respectfully submitted that "license availability" has nothing to do with and/or is independent of the "server performance" (*i.e.*, "processor load; context switches; memory usage; page faults; page swaps; transmission rate of input/output reads or writes; number of input/output operations performed") that is measured by Freeman's operational meters. For example, a server may not be operating at all, and yet such server may have licenses available.

Since Freeman manages load using rules based on operational meters that measure aspects of a server's performance, and does not disclose, teach, or suggest, "load balancing according to license availability…" as recited in claim 1, claim 1 is allowable.

B.   Other independent claims

Independent claim 12 as amended herein recites, *inter alia*, "means for load balancing according to said number of paid permitted connections." Independent claim 37 as amended herein recites, *inter alia*, "a network device adapted to load balance traffic amongst a plurality of servers according to a number of paid permitted connections." Independent claim 42

as amended herein recites, *inter alia*, "load balance traffic amongst said plurality of servers according to said number of paid permitted connections." It is respectfully submitted that Freeman does not teach these recitations.

For example and as alluded to above, Freeman manages load according to rules that are based on operational meters that measure aspects of a server's performance. Freeman is silent with respect to load balance or load balancing according to a "number of <u>paid</u> <u>permitted connections</u>" (emphasis ours).

Hence for at least these reasons, claims 12, 37, and 42 are allowable.

C.   <u>Dependent claims 9 and 46-47</u>

Dependent claim 9 as amended herein recites, *inter alia*, "providing a warning message if a <u>threshold limit, of a number of licensed connections</u> less than said maximum limit of licensed connections, <u>is reached</u>." Dependent claims 46-47 recite analogous subject matter, using varying language. It is respectfully submitted that such recitations are not taught by the cited references.

For example, the final Office Action admitted on page 6 (section 21) that Freeman did not show the subject matter of previously presented claim 9. However, the final Office Action continued to rely upon Eggleston, alleging on page 7 (section 29) that Eggleston's "further rate governor deals with **users** and group data transfers" (emphasis ours).

It is again respectfully submitted that the final Office Action has misinterpreted the teachings of Eggleston.

Eggleston does NOT say "the further rate governor deals with **users** and group data transfers" (emphasis ours--see in particular the plural form of "users" provided by the final Office Action) as alleged by the final Office Action. Rather, column 3, line 65 to column 4, line 3 of Eggleston says the following (emphasis ours):

> "A further rate governor responsive to the main rate governor, may also be
> used at the remote unit. By means of this rate governor a mechanism is
> provided for both limiting <u>user or group data transfer</u> beyond a set amount,
> as well as providing alerts to users as the limit is approached."

11

In the above-quoted passage from Eggleston, he does <u>not</u> teach that "users" (plural) are limited beyond a set amount. Rather, Eggleston teaches that "user [singular] data transfer" and "group data transfer" are limited beyond the set amount. Stated in another way, Eggleston is limiting the amount of <u>data transfer</u> from a user or from a group--Eggleston does not provide a limit on the number of users, and in particular does not provide a threshold limit on "a number of licensed connections" as recited in claim 9. Indeed, since the quoted passage of Eggleston uses the singular form of "user", rather than the plural form "users" (which is used by the final Office Action), the singular form of "user" therefore functions as an adjective/modifier for the subsequent noun "data transfer", such that the correct and only plausible reading of Eggleston's phrase is a limit on "user data transfer."

Second, Eggleston is describing limits on the <u>time and/or charges</u> for <u>data transfer</u>. In comparison, claim 9 recites a warning message if "a threshold limit, of a number of licensed connections ..., is reached." It is respectfully submitted that a limit for time/charges of Eggleston is not the same as a limit a number of licensed connections of claim 9.

In view of at least the above reasons, claims 9 and 46-47 are allowable.

D.   Other claim amendments

Various other amendments are made to the claims as shown to remove unnecessary recitations, to make the language within and between amended claims consistent, to more precisely recite the subject matter therein, to provide consistent antecedent basis, and/or to otherwise place such claims in better form.

II.   Rejection of claim 13 under 35 U.S.C. § 112, second paragraph

The final Office Action rejected claim 13 for being indefinite. It is respectfully submitted that the amendments to claim 13 herein sufficiently address the indefiniteness rejection.

III.   Conclusion

If there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the attorney of record (Dennis M. de Guzman).

The Director is authorized to charge any additional fees due by way of this response, or credit any overpayment, to our Deposit Account No. 500393.

It is respectfully submitted that all pending claims are in condition for allowance. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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